NOT DESIGNATED FOR PUBLICATION

No. 125,429

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Interests of
J.T. and M.T., Minor Children.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; RICHARD A. MACIAS, judge. Opinion filed April 14, 2023. Affirmed.

Grant A. Brazill, of Morris, Laing, Evans, Brock & Kennedy, Chartered, of Wichita, for appellant natural father.

Kristi D. Allen, assistant district attorney, and *Marc Bennett*, district attorney, for appellee.

Before GREEN, P.J., GARDNER, J., and PATRICK D. MCANANY, S.J.

PER CURIAM: In this consolidated appeal, Father argues that the district court wrongly terminated his parental rights over his sons, J.T. and M.T. Father argues that the district court erred by terminating his parental rights because clear and convincing evidence did not support its findings that he was unfit and unlikely to become fit to care for J.T. and M.T. in the foreseeable future as stated under K.S.A. 38-2269(a). Essentially, Father contends that the district court ignored evidence of his progress completing his reintegration case plan tasks, which established that he would become fit to care for J.T. and M.T. in the foreseeable future. He also complains that the district court's parental unfitness findings wrongly ignored evidence that the private agency providing family rehabilitation services to him made inadequate efforts to contact him during the children's child in need of care (CINC) cases. Thus, he asks us to reverse the district court's

decision terminating his parental rights over J.T. and M.T. because clear and convincing evidence did not support its parental unfitness rulings.

In the alternative, Father asserts that the district court abused its discretion when it ruled that it was in J.T.'s and M.T.'s physical, mental, and emotional best interests to terminate his parental rights as stated under K.S.A. 38-2269(g)(1). He asserts that a preponderance of the evidence does not support the district court's best interests determinations because the State's evidence about the children's best interests at the termination of parental rights (TPR) hearings was "mixed at best." So, Father argues that if we reject his argument that clear and convincing evidence does not support the district court's parental unfitness ruling under K.S.A. 38-2269(a), we should reverse the termination of his parental rights because a preponderance of the evidence does not support the district court's best interests determinations under K.S.A. 38-2269(g)(1).

Nevertheless, there are multiple problems with Father's primary and alternative arguments. Highly summarized, Father's arguments about the district court's parental unfitness rulings and best interests of the children determinations hinge on ignoring the district court's strong credibility determination made against him and disregarding the State's adverse evidence against him. Thus, we reject both of Father's arguments, affirming the district court's termination of his parental rights over J.T. and M.T.

FACTS

I. *Background Information*

On May 25, 2019, Mother gave birth to J.T. When she was admitted into the hospital, Mother had unexplained bruising on her body. Then, following J.T.'s birth, Mother told nursing staff that Father physically abused her. She accused Father of "push[ing] her around" to the point that she went into labor with J.T. A short time later,

when a nurse confronted Mother with drug testing results showing that she and J.T. had methamphetamine in their bodies at J.T.'s birth, Mother became very upset. She denied using methamphetamine while pregnant.

Because J.T. was born with methamphetamine in his body, the Department for Children and Families (DCF) started investigating whether J.T. was a child in need of care. For this same reason, DCF started investigating whether two of Mother's other children—J.T.'s half-siblings who had a different biological father—were children in need of care. Although J.T.'s six-year-old brother and four-year-old sister had a different biological father, J.T.'s older siblings sometimes lived with Father. For instance, a previous unsubstantiated DCF neglect investigation established that Father was living with the older siblings on November 5, 2018. Also, immediately before they were taken into DCF protective custody on May 30, 2019, the older siblings had been living with Father in a motel the past two months.

During its CINC investigation for J.T., Mother and J.T.'s older brother and older sister spoke to a social worker. During her May 28, 2019 interview with the social worker, Mother stated that Father sometimes "hits her" and that she felt unsafe around Father. During her May 31, 2019 interview with the social worker, Mother alleged that Father made money by selling drugs. Concerning Father's whereabouts, she told the social worker that Father knew that DCF wanted to talk to him about J.T.'s ongoing CINC investigation. But she explained that she had also told Father to "stay away." Regardless, the social worker reported that she left three messages on Father's cell phone during the week following J.T.'s birth, asking Father to return her calls to discuss J.T.'s ongoing CINC investigation. Father never returned her calls.

As for the older siblings' interviews with the social worker, J.T.'s four-year-old sister said very little about Father. During J.T.'s six-year-old brother's interview on May 31, 2019, however, he explained that he did not like Father. He told the social

worker that he feared Father because Father fought with Mother. He alleged that once he saw Father push Mother down some stairs. He further alleged that once he saw Father hit Mother with both hands. Also, he told the social worker that Father tried "to throw him through a window and he [did] not know why."

On June 3, 2019, citing the preceding evidence, the State moved the district court to find J.T. as well as his older siblings, who had a different Father, as children in need of care. As for J.T.'s father specifically, the State argued that J.T. could not remain in Father's care for the following reasons:

> "[Father] has failed to provide a safe and stable living environment for [J.T.]. [Father] resides with Mother at [a] motel. There are concerns the children have lice and are not receiving proper medical care. The home has cockroaches and the children have been exposed to methamphetamine use by [Father]. [Father] has failed to protect [J.T.] from his instability and poor judgment. [Father] has engaged in domestic violence incidents with Mother in the presence of the minor children. Mother reported that [Father] injured her so severely that she went into labor. [Father] has exposed [J.T.] to his substance abuse issues including methamphetamine. Mother reported that [Father] does not work and that he deals drugs. There are concerns for [J.T.'s] safety while in [Father's] care. [Father] has a history of domestic violence and drug use that is a risk to [J.T.'s] safety. [Father] has not made the necessary changes to his lifestyle to keep [J.T.] safe. Court intervention is necessary at this time to ensure [J.T.'s] safety and well-being."

The State also argued that Father's criminal history supported its concerns for J.T.'s safety. The CINC petition explained that since April 2011, Father had been accused or arrested for domestic violence offenses 16 times and convicted of battery or domestic violence offenses 6 times.

Although it is unclear how DCF reached Father, on June 4, 2019, Father appeared with his appointed attorney at a hearing in which the district court awarded the State temporary custody of J.T. Then, at J.T.'s adjudication and disposition hearing on July 26,

2019, Father pleaded no contest that J.T. was a child in need of care for the reasons stated in the State's June 3, 2019 CINC petition. As a result, the district court ordered J.T. to remain in DCF's custody in an out-of-home placement. And it ordered Father to complete the State's previously requested case plan tasks directed toward reintegrating Father with J.T.

The reintegration case plan tasks approved by the district court on July 26, 2019, required Father to do the following: (1) that Father sign all required releases and forms, (2) that he complete a clinical interview and assessment, (3) that he complete a parenting course, (4) that he complete a budget and nutrition course, (5) that he complete a substance abuse evaluation, (6) that he refrain from using any illegal drugs or alcohol, (7) that he submit to hair-follicle drug testing every 90 days and within 24 hours of such request, (8) that he submit to random urinalysis drug testing twice monthly and within 24 hours of such request, (9) that he complete a domestic violence course, (10) that he maintain appropriate and stable housing, and (11) that he maintain full-time employment or actively search for a job. His court-approved reintegration case plan tasks also required him to "follow all recommendations" of his "assessments, evaluations, tests, and treatment programs." Additionally, by June 1, 2020, the district court had ordered Father to provide Saint Francis Ministries (SFM), the private agency that DCF contracted with in J.T.'s CINC case to rehabilitate the family, with the following: that he complete his parenting course, that he complete his domestic violence course, that he reside in stable and appropriate housing, and that he remain employed full-time or actively looking for a job.

Ultimately, on February 23, 2021, the State moved to terminate Father's parental rights over J.T. The State argued that the district court should terminate Father's parental rights because Father was presently unfit to care for J.T. and was not going to become fit to care for J.T. in the foreseeable future as stated under K.S.A. 38-2269(a). In particular, the State argued that Father was unfit and unlikely to become fit to parent J.T. in the

foreseeable future based on the following factors: (1) because Father's dangerous drug use rendered him unable to care for J.T.'s ongoing physical, mental, or emotional needs as stated under K.S.A. 38-2269(b)(3); (2) because Father did not reintegrate with J.T. despite public and private agencies' reasonable efforts as stated under K.S.A. 38-2269(b)(7); (3) because Father did not adjust his circumstances, conduct, or condition to meet J.T.'s needs as stated under K.S.A. 38-2269(b)(8); (4) because Father did not maintain regular visitation, contact, or communication with SFM or J.T. as meant under K.S.A. 38-2269(c)(2); and (5) because Father did not carry out a reasonable court-approved reintegration case plan directed toward reintegrating with J.T. as stated under K.S.A. 38-2269(c)(3). As proof that Father was unfit in the preceding ways, the State pointed to evidence supporting the following: (1) that Father continued to use methamphetamine, (2) that he continued to physically abuse Mother, (3) that he continued to commit other crimes, (4) that he had unstable housing, (5) that he had unstable employment, (6) that his communications with SFM were inadequate, and (7) that his visitation efforts were inadequate. Based on this evidence, the State argued that termination of Father's parental rights over J.T. was in his physical, mental, and emotional best interests. *And it implied that Father may have known the location of Mother and her newborn child, M.T.*

Before the State moved to terminate Father's parental rights over J.T. on February 23, 2021, Mother had another child. On August 24, 2020, Mother gave birth to M.T. It seems that Mother left the hospital with M.T. almost immediately after his birth. Although it is unclear whether the hospital or someone else reported M.T.'s birth to DCF, DCF received three reports all worried about M.T.'s safety during the two days following M.T.'s birth.

In the months leading up to M.T.'s birth, SFM had inconsistent contact with Mother and Father. Then, when SFM staff attempted to reach Mother after M.T.'s birth, the staff was unable to do so. Although one SFM employee spoke with Mother by phone

on December 4, 2020, nobody with SFM had physical contact with Mother for about eight months after M.T. was born. During this time, Mother refused to tell SFM staff where she and M.T. were staying. Even a DCF Child Protection Specialist assigned to locate Mother and M.T. was unable to reach Mother. This DCF employee made four unsuccessful attempts to interview Mother in September and October 2020. As for Father's knowledge about Mother's and M.T.'s whereabouts, Father consistently told SFM staff that he did not know where they were located.

Because DCF and SFM were concerned about Mother's ability to care for M.T. given J.T.'s and the older siblings' ongoing CINC cases, they filed a report requesting law enforcement's help attempting to locate Mother on October 8, 2020. Although Father previously told SFM staff that he did not know Mother's or M.T.'s whereabouts, when an officer asked about their location during the attempt to locate investigation, Father told the officer that Mother and M.T. were living with Mother's sister.

Next, on October 16, 2020, the State moved the district court to find M.T. a child in need of care *while M.T.'s whereabouts were still unknown*. It argued that Father had made inadequate progress in J.T.'s CINC case, which established that M.T. could not safely stay in the care of Father. That is, it argued that M.T. was a child in need of care because in J.T.'s CINC case, evidence supported that Father had ongoing struggles with substance abuse, domestic violence, housing stability, employment stability, communicating with SFM, and parenting J.T. properly during visitations. In M.T.'s CINC motion, the State also suggested that Father's alleged failure to know M.T.'s location constituted neglect.

On October 21, 2020, although M.T.'s location was still unknown, the district court awarded DCF temporary custody of M.T. Father appeared at the custody hearing. *But he denied being M.T.'s father*. As a result, the district court ordered Father to undergo paternity testing. Yet, to resolve the paternity issue, M.T.'s DNA had to be compared to

Father's DNA. So, Father's paternity challenge stopped the State from prosecuting its October 16, 2020 CINC motion for M.T. until M.T. could be located for genetic testing. Even so, at the temporary custody hearing, the district court ordered Father to follow all orders from J.T.'s CINC case in M.T.'s current custody case. Hence, as of October 21, 2020, the district court ordered Father to follow and apply J.T.'s reintegration case plan tasks to M.T.

The State moved to terminate Father's parental rights over J.T. on February 23, 2021. A few months later, on May 3, 2021, Father dropped M.T. off at SFM's office without any explanation where M.T. had been since his birth on August 24, 2020. The next day, SFM submitted M.T.'s hair follicles for drug testing. This testing established that eight-month-old M.T. had amphetamines and methamphetamine in his body. Father's May 21, 2021 paternity results proved that M.T. was his son.

On July 23, 2021, Father pleaded no contest to M.T. being a child in need of care as alleged in the State's October 16, 2020 CINC petition. When Father pleaded no contest to M.T. being a child in need of care, the district court repeated its order that Father follow and apply the same reintegration case plan tasks in J.T.'s CINC case in M.T.'s case. About a month later, on August 25, 2021, the State moved to terminate Father's parental rights over M.T. In its TPR motion, the State primarily relied on evidence indicating that Father used dangerous drugs to prove that Father was currently unfit to parent and unlikely to become fit to parent M.T. in the foreseeable future as meant under K.S.A. 38-2269(a), (b)(3), (b)(7), (b)(8), and (c)(3) and that termination of Father's parental rights was in M.T.'s best interests as meant under K.S.A. 38-2269(g)(1). Once the State filed this motion, Father's TPR hearing on M.T. was set for November 16, 2021.

II. *Procedural Issues*

As outlined, the district court adjudicated J.T. and M.T. as children in need of care at different times—on July 26, 2019, and July 23, 2021, respectively. And when Father's first TPR hearing began in J.T.'s CINC case on August 10, 2021, the State had not yet moved to terminate Father's or Mother's parental rights over M.T. It filed this termination motion on August 25, 2021.

Nevertheless, at the end of the first day of evidence, citing judicial economy, the State explained that before the next day of evidence, it intended to move to terminate Father's and Mother's parental rights over M.T. and to consolidate J.T.'s and M.T.'s TPR hearings. It argued that the district court should consider Father's parental fitness over J.T. and M.T., as well as Mother's parental fitness over the older siblings, in a single hearing. Afterwards, at the next TPR hearing on November 16, 2021, neither Father nor Mother objected to the State's motion to consolidate Father's or Mother's TPR hearings for J.T. and M.T. this way. Thus, although the State had not moved to terminate Father's parental rights over M.T. as of the first TPR hearing, the parties agreed that the district court could consider evidence from the first TPR hearing when ruling on the State's August 25, 2021 motion to terminate Father's parental rights over M.T.

Next, it is also important to note that J.T.'s and M.T.'s CINC cases were complicated by the COVID-19 pandemic. During J.T.'s and M.T.'s CINC cases, two people served as Father's permanency specialist. A permanency specialist manages a CINC case, providing support to the family with the goal of rehabilitation. The specialist tracks a parent's progress completing his or her court-approved reintegration case plan tasks. Also, the specialist writes the court reports on a family's progress towards reintegration. Another SFM employee, a reintegration supervisor, oversees the work of the permanency specialist in each CINC case. Here, although Saundre Clemons was the permanency specialist who worked with the family starting in June 2020, he became ill

with COVID-19 around Thanksgiving, November 2021. As a result, although Karen Hubbard initially served just as the reintegration supervisor in J.T.'s and M.T.'s CINC cases, after Clemons contracted COVID-19, Hubbard essentially served as the family's acting permanency specialist. Following Clemons' illness, she started completing the court reports like a permanency specialist.

Additionally, Clemons' illness delayed the State's presentation of Clemons' testimony at Father's TPR hearing. Because Clemons was sick with COVID-19 when the State intended to call him to testify on the third day of evidence, December 8, 2021, it could not until the fourth day of evidence on January 14, 2022. On that fourth day, the State called Hubbard to testify as well. So, the State presented Clemons' and Hubbard's testimony after Father and Mother had presented their defenses. Importantly, the district court gave Father and Mother the opportunity to present new evidence in their defense after Clemons' and Hubbard's testimony.

III. *TPR Hearings*

Father's and Mother's joint TPR hearings occurred over four days on August 10, 2021, November 16, 2021, December 8, 2021, and January 14, 2022. The State's case supporting the termination of Father's parental rights relied heavily on the observations and opinions of the SFM staff who worked on J.T.'s and M.T.'s CINC cases and their reports to the district court discussing Father's reintegration progress. This staff generally testified that termination of Father's parental rights was in J.T.'s and M.T.'s best interests because Father was unfit and unlikely to become fit to care for them in the foreseeable future based on his ongoing substance abuse, domestic violence, housing instability, and employment stability problems. The State admitted SFM's court reports in J.T.'s and M.T.'s CINC cases without objection; this included the SFM court report that Hubbard completed for the fourth TPR hearing on January 14, 2022. Yet, the State also called Father and Mother as its own witnesses.

Father's defense was that although he made mistakes in the past, he had not violated many of the reintegration case plan tasks as alleged by the State. He also pointed to evidence that he had completed many of his reintegration case plan tasks. Father emphatically testified that he had not violated his tasks related to using dangerous drugs, testing for drugs, committing domestic violence, communicating with SFM, and visiting with the children. Moreover, he asserted that the district court should not terminate his parental rights because SFM's efforts to rehabilitate him with J.T. and M.T. were unreasonable. Father supported his arguments by testifying on his own behalf.

a. *Substance Abuse*

Clemons and Hubbard testified about Father's inconsistent drug test results. Hubbard stressed that since she started working as Father's acting permanency specialist, Father never contacted or responded to her phone calls. Hubbard's only contact with Father was at his court hearings. She testified that when she called Father's phone number on November 22, 2021, Father did not answer or return her call. She testified that when she tried calling Father's phone number on December 8, 2021, his phone was disconnected. Citing her inability to reach Father by phone, Hubbard testified that SFM had not been able to complete any drug testing on Father since late November 2021.

Hubbard also alleged that Father had violated his reintegration case plan tasks concerning dangerous drug use and drug testing on several occasions throughout J.T.'s and M.T.'s CINC cases. Hubbard's court report for Father's fourth TPR hearing in January 2022 stated that while many of Father's drug tests throughout the children's CINC cases had been negative for dangerous drugs, Father's hair follicle drug tests were positive for methamphetamine five times: (1) on November 7, 2019; (2) on December 17, 2020; (3) on February 10, 2021; (4) on August 16, 2021; and (5) on September 21, 2021. Hubbard's report stated that Father submitted insufficient hair follicles for drug testing on July 20, 2021. And her report stated that before Father stopped answering SFM's phone calls in

late November 2021, Father never completed drug testing within 24 hours of SFM's request six times: (1) on March 16, 2021; (2) on March 30, 2021; (3) on April 14, 2021; (4) on April 28, 2021; (5) on September 1, 2021; and (6) October 27, 2021. Clemons added that although Father completed outpatient treatment during J.T.'s CINC case, Father failed four of the five methamphetamine-positive hair follicle tests after completing this outpatient treatment.

When the State called Father at the first TPR hearing on August 10, 2021, Father consistently denied having any substance abuse problem. He testified that he had never used methamphetamine. He testified that the last time he used a dangerous drug was two years prior when he smoked marijuana. He testified that he probably failed his drug tests because he was "around people who smoke [methamphetamine]." When asked why he did not complete drug testing within 24 hours of SFM's requests on several occasions, he testified that he "probably got too busy doing what [he had to] do."

Also, he denied knowing anything about why J.T. and M.T. had methamphetamine in their bodies. He testified that he did not know how the babies tested positive for methamphetamine. He alleged that he had no knowledge of Mother ever using methamphetamine.

When the State continued its questioning of Father at the second TPR hearing on November 16, 2021, Father admitted that he had been recently arrested for driving under the influence (DUI) of alcohol. All the same, when the State asked Father to explain why his August 16, 2021 and September 21, 2021 hair follicle drug tests were positive for methamphetamine, Father strongly denied ever using methamphetamine.

When testifying on his own behalf about his drug use at the third TPR hearing on December 8, 2021, he mostly focused on his completion of a couple of substance abuse evaluations. But during his testimony, he admitted that he did not enter outpatient drug

treatment as recommended by his first substance abuse evaluation from July 2021. Then, when he discussed the substance abuse evaluation that he had completed just the day before—December 7, 2021—he admitted that he never told the evaluator that he had recently submitted methamphetamine-positive hair follicles to SFM for drug testing. According to Father, he never told the evaluator about those failed drug tests because the evaluator never specifically asked him about those failed drug tests. At the same time, he testified that he had disclosed his most recent DUI arrest in November 2021 to the evaluator. When asked if he believed that he needed to enter drug treatment as recommended by his most recent substance abuse evaluation, Father testified that he did not need to enter treatment because he "[did not] do drugs."

b. *Domestic Violence*

When the State asked Clemons whether he worried about Father physically abusing Mother, Clemons testified that he was concerned about the domestic violence in Father and Mother's relationship. He testified that Mother had told him that Father was "an abuser." Based on his discussions with Mother, he believed that there was ongoing domestic violence in September 2021. Grace Rossow, an SFM employee who had monitored some of the family's visitations, also testified that she had domestic violence concerns. She believed that Father was physically abusing Mother because when she arrived for the family's scheduled visitation on October 13, 2021, Mother had "a large bald spot at the front portion of her scalp." According to Rossow, Mother told her that she and Father needed to cancel the scheduled visitation because she had a toothache. But Rossow further explained that as Mother said this, she gestured towards Father. And then Mother told her that Father was responsible for the large bald spot on her hairline.

On November 16, 2021, at the second day of Father's and Mother's joint TPR hearings, when the State asked Mother about her previous allegations of domestic violence against Father, Mother agreed that she had made prior allegations against Father.

She agreed that she told a nurse that Father pushed her around to the point that she went into labor with J.T. She agreed that near the time of J.T.'s birth, she had told others that she believed she could not end her relationship with Father. She testified that Father would be "relentless until [she] went back to the relationship, to the situation." When the State asked Mother about whether Father tried to strangle her on August 11, 2020, and tried to run over her with a car on August 12, 2020, Mother responded, "There was a domestic dispute that day." When the State asked Mother about whether she contacted police those dates, alleging that Father had tried to strangle her and run over her with a car, Mother agreed that she had made those reports against Father to the police. When asked about what happened after she called the police on August 11, 2020, and August 12, 2020, Mother testified that she believed Father was arrested on August 11, 2020, but not on August 12, 2020. She added that although she did not believe Father was arrested on August 12, 2020, she believed Father was arrested for aggravated assault and domestic violence on August 11, 2020.

On November 16, 2021, when Mother testified at the second TPR hearing, she said that she and Father had a "somewhat" strong relationship. She also said that she currently lived with Father in Father's apartment. On December 8, 2021, when Mother testified at the third TPR hearing, Mother now said that she had no intention of living with or becoming romantically involved with Father in the future. When asked by the State, Mother agreed that she contacted law enforcement for housing help on November 17, 2021. She agreed that as of November 17, 2021, she decided to live in her car instead of with Father. When asked by the State why she opted to live in her car instead of Father's apartment, Mother would only say that she "wasn't comfortable being [at Father's apartment] then."

In his testimony, Father explained that he had recently completed his reintegration case plan task to take a domestic violence course, giving SFM proof that he completed this course. He admitted that he and Mother had an on-again-off-again relationship for

about four or five years. But Father testified that he never physically abused Mother. When the State asked him about Mother's allegation that he pushed her around until she went into labor with J.T., Father denied this. He testified that the allegation was based on "false information." When the State asked Father about the evidence indicating that he attempted to strangle Mother on August 11, 2020, and that he attempted to run over Mother with a car on August 12, 2020, Father initially testified that he had no knowledge of those incidents. But in his later testimony, he emphasized that he had only been arrested, not charged, with crimes. He responded to the State's question whether he attempted to run Mother over on August 12, 2020, by saying, "Nope. Have I got locked up for that? Nope. I ain't got charged for that either."

c. *Housing*

The State's evidence that Father lived in unstable housing conditions often overlapped with its evidence that Father was in a physically abusive relationship with Mother. On August 10, 2021, at the first TPR hearing, Father testified that he was moving into an apartment on Beverly Street later that day. He explained that for the past year, he had lived in a motel with a $200 week-to-week lease. And he explained that he had sometimes shared this motel with Mother. But Father testified that he did not want Mother to live with him at the Beverly apartment, for which he signed a $599 month-to-month lease. As for the current conditions of the Beverly apartment, although Father testified that he did not presently have furniture or clothing for the children, he told the district court that he would buy such necessities if it awarded him custody of J.T. and M.T.

On November 16, 2021, at the second TPR hearing, Father testified that Mother was living with him at the Beverly apartment as they attempted to "work things out." On December 8, 2021, at the third TPR hearing, Rossow explained how she conducted a walk-through of the Beverly apartment on September 8, 2021, so the family could have

supervised visitation there. Rossow reported that the apartment failed the inspection because it was cluttered and bugs were crawling on the wall. Still, she explained that Father quickly fixed those problems, and he had visitation with the children in the Beverly apartment on September 15, 2021. Rossow also testified that the Beverly apartment appeared appropriate when she supervised her final visit there on November 3, 2021.

After November 3, 2021, though, it seems that SFM conducted no further walk-throughs of the Beverly apartment. Although Hubbard testified about Father not returning her phone call on November 22, 2021, and Father's phone being disconnected on December 8, 2021, nobody from SFM physically went to the Beverly apartment after November 3, 2021, (1) to determine whether Father still lived there or (2) to determine whether the apartment constituted stable and appropriate housing. On January 14, 2022, at the fourth TPR hearing, Clemons testified that the SFM staff had told him that Father was no longer living at the Beverly apartment. Father's line of questioning regarding the stability and appropriateness of his housing focused on whether the State had sufficiently proved he no longer lived at the Beverly apartment because SFM had not conducted a walk-through of the apartment since November 3, 2021. In doing so, he questioned Hubbard's efforts as acting permanency specialist to contact him once Clemons became ill in late November 2021. He testified that for the past five years, he had the same phone number, which was never disconnected. He testified that he always returned any phone call or text message sent to him by SFM staff. And he suggested that anybody could have located him at his Beverly apartment, where he continued to live.

d. *Employment*

On January 14, 2022, at the fourth TPR hearing, Clemons testified that Father never had consistent employment. He testified that Father's jobs were always temporary. He testified that Father had not provided SFM any proof of employment since the fall of

2021. Additionally, when Father cross-examined Clemons, *Father conceded* that he never had regular employment; Clemons agreed with the concession.

When Father testified at the first TPR hearing on August 10, 2021, Father testified that for the past two months, he had a job with "Aerotek" earning about $400 per week. Additionally, he explained that from March 2020 when he lost a job at "Pratt" until his employment at "Aerotek," he only had "side jobs" where he was "getting paid under the table." During his second TPR hearing on November 16, 2021, Father testified that he had lost his job at "Arrow Sales" because he missed too many days of work because of his court cases. Father did not know the exact date that he lost his job. At his third TPR hearing on December 8, 2021, Father testified that although he interviewed for a job the previous week, he was currently unemployed.

Of importance, an issue throughout the children's CINC cases was Father's numerous convictions for driving crimes, including nonmoving driving violations. SFM's October 2020 court report stated that Father was on probation for driving on a suspended license then. Per Father's testimony, he remained on probation for some sort of driving offense at his first TPR hearing on August 10, 2021, and at his third TPR hearing on December 8, 2021. Also, at his first TPR hearing, Father told the district court that he had been arrested for driving on a suspended driver's license four times so far in 2021. Although Father testified that he would not drive with his children in the car, Father told the district court that he intended to keep driving on his suspended license because he needed to "get around." He testified that he owed $5,000 in traffic fines that he had to pay before he could get his driver's license back. And he explained that he still needed to pay his $950 probation fee.

When asked by the State at his first TPR hearing on August 10, 2021, Father admitted that he had not completed a mental health evaluation or a budget and nutrition class as required by his reintegration case plan tasks. At the second TPR hearing on

November 16, 2021, when the State asked Father how he was supporting himself since he lost his job, Father admitted that he currently had no money to support himself. He responded that he would continue to look for full-time employment while also working "side jobs." Also at this hearing, when the State asked Father whether he could earn enough money to pay for his rent and necessities, Father responded, "Not really, but I know how to budget money."

e. *Communication and Visitation*

When Clemons, Hubbard, and Rossow testified, they all discussed their concerns about Father's communication efforts—both with SFM and the children. Clemons explained that from what he knew, Father's visitations with the children were "going reasonably well." He testified that "[f]or the most part," he was able to reach Father at his phone number when he was serving as permanency specialist. Still, Clemons testified that when he asked Father about M.T.'s location, Father consistently told him that he did not know M.T.'s location. He testified that Father never gave any explanation of how M.T. came into his care before bringing him to the SFM office on May 3, 2021.

As discussed earlier, although Father testified that his phone number was still working, Hubbard testified that after she filled in for Clemons as permanency specialist, she could not reach Father at his given phone number. She testified that Father did not return her phone call when she left him a message on November 22, 2021, and his phone was disconnected when she tried calling on December 8, 2021. Hubbard explained that she called Father on those dates because she wanted him to submit to random drug testing. Hubbard suggested that Father's communications with SFM were inadequate because Father had a duty to remain in contact with SFM, yet Father had not contacted SFM since before Clemons' illness in late November 2021. Likewise, Hubbard suggested that Father's failure to communicate with SFM was why Father had no visitations with J.T. and M.T. since Clemons' illness in late November 2021.

Rossow's testimony and visitations reports showed that between October 9, 2020, and November 9, 2021, Father missed 8 of his 37 supervised visits with the children. She explained that Father's supervised visits were moved from the SFM office to the Beverly apartment on September 15, 2021. She testified that when Father attended his supervised visitations at the SFM office, he often arrived late. And she testified that Father's behavior during his visitations was often inadequate. According to Rossow, although Father's behavior was appropriate during some visitations, Father frequently had no interactions with J.T. and M.T. during the visitations. Instead, he would go into a different room away from the children. In particular, she reported that after the supervised visits were moved to the Beverly apartment on September 15, 2021, Father would remain in one room of the apartment while Mother interacted with the children in a different room. She explained that often, Father just let the children watch television by themselves. Also, she explained that during Father's final two visitations with J.T. and M.T. on October 20, 2021, and November 3, 2021, Father was still not interacting with J.T. and M.T.

Father testified that his communication efforts with SFM and his children were adequate. He agreed that he missed some scheduled visitations, that he was late for some scheduled visitations, and that he did not actively participate in some supervised visitations. Even so, Father contended that he did nothing wrong when he did not visit with his children during their supervised visitations. He testified that he did not "feel comfortable with somebody there when [he] interact[ed] with [his] kids." He agreed with the State's assertion that he "chose not to interact with [his] kids because somebody was watching." He also testified that he had completed his parenting class.

When asked by the State about M.T.'s location from his birth on August 24, 2020, until Father brought M.T. to the SFM office on May 3, 2021, Father gave inconsistent answers. Although he denied knowing that DCF was looking for Mother and M.T., he testified that he did not know Mother's and M.T.'s location while they were missing

because he "never asked questions." He testified that he also did not know Mother's and M.T.'s location while they were missing because when people "[told him] stuff," he did not "listen." He admitted that he physically saw M.T. about two weeks after his birth. But when asked where this happened, Father testified that he could not remember. Father further testified that he did not know who was taking care of M.T. but he knew that M.T. "was taken care of real good." And he alleged that he did not see M.T. again until the day he brought him into SFM's office.

As for the months following M.T.'s birth, the State asked Father what efforts he took to ensure M.T. was safe, fed, and clothed. Father testified that he never checked up on M.T. because "[p]eople were telling [him] that he was taken care of." He alleged that if he learned from someone that M.T. needed diapers, he would buy M.T. diapers. He testified that he could not remember exactly how he learned about M.T.'s location on May 3, 2021. Yet, he testified that M.T. came into his care after he learned of M.T.'s location through a "close" "mutual friend," whose name he could not remember. He testified that he told this person to "bring [M.T.] to [him]," after which he almost immediately brought M.T. to the SFM office.

When the State asked Father why he brought M.T. into the SFM office on May 3, 2021, the State and Father had the following exchange:

> "A. [Father]: I just got tired of you all. I just got tired.
> "Q. [the State]: Got tired of being asked about him?
> "A. [Father]: Yep."

When asked about M.T.'s hair follicles testing positive for methamphetamine after he returned the eight-month-old M.T. to SFM's office, Father initially testified that it did not surprise him that M.T. had methamphetamine in his body "[b]ecause I guess the people that he was around." Immediately after saying this, the State asked if Father knew who

M.T. was "around" while he was missing. Father responded, "No, ma'am. But I know they never did drugs but I don't know how it got in his system."

Of significance, during her testimony about M.T.'s whereabouts following his birth, Mother testified that she entered into an informal guardianship agreement with her friend to take care of M.T. She claimed that she did not know DCF was looking for M.T. when she entered the informal guardianship agreement with her friend, who she deemed capable of safely caring for M.T. She testified that she visited M.T. frequently while DCF and SFM were looking for him. She testified that although she did not know how or why M.T. was transferred from her friend to someone else, she testified that the person M.T. "ended up with [was] a friend of [Father]." She testified that once M.T. was with Father, she assumed that M.T. was living with Father. She also testified that she had no idea how M.T. tested positive for methamphetamine.

IV. *The Ruling*

At the end of the fourth TPR hearing, the district court took the matter whether to terminate Father's parental rights over J.T. and M.T. under advisement. Eventually, on May 27, 2022, the district court granted the State's motions to terminate Father's parental rights over J.T. and M.T.

Significantly, before the district court made its parental unfitness and best interests of the child rulings, the district court explicitly found Father's testimony incredible:

> "The court finds Father's testimony evasive, at times confrontational, self-serving, and simply overall, lacking in credibility. He often slumped in the witness chair, scoffed at some questions, and his countenance evoked a sense of disregard for the entire process. Rather than viewing the proceedings as a manner in which to assist his parenting skills, he viewed the process as an annoyance."

The court also found "Rossow a credible witness." It found her testimony "unbiased" and "forthright."

Then, for both J.T. and M.T., the district court ruled that clear and convincing evidence supported that Father was presently unfit and unlikely to become fit to care for the children in the foreseeable future for the following reasons: (1) because Father's dangerous drug use rendered him unable to care for the children's ongoing physical, mental, or emotional needs as set out under K.S.A. 38-2269(b)(3); (2) because DCF's and SFM's reasonable efforts to rehabilitate Father with the children had failed as set out under K.S.A. 38-2269(b)(7); (3) because Father had not adjusted his circumstances, conduct, or conditions to meet the children's needs as set out under K.S.A. 38-2269(b)(8); (4) because Father failed to adequately communicate with SFM and visit with J.T. and M.T. as set out under K.S.A. 38-2269(c)(2); and (5) because Father failed to carry out a reasonable court-approved case plan directed toward reintegrating with J.T. and M.T. as set out under K.S.A. 38-2269(c)(3). In support of those rulings, the district court cited the evidence of the following: (1) that Father had a substance abuse problem; (2) that he had a domestic violence problem; (3) that he had unstable housing; (4) that he had unstable employment; (5) that he did not remain in consistent communication with SFM; and (6) that his visitation efforts with J.T. and M.T. were inadequate.

As for J.T.'s and M.T.'s best interests, the district court determined by a preponderance of the evidence that it was in the children's best physical, mental, and emotional needs to terminate Father's parental rights. In making this ruling, it stressed that DCF has had custody of J.T. and M.T. their entire lives. It noted that as of that date—the date it was entering its written order—this meant that J.T. had lived in DCF custody for nearly three years. Citing the rule that courts must consider the child's best interests while using child time, the district court determined that J.T. and M.T. deserved permanency that Father could not provide based on Father's inadequate reintegration efforts. It stressed that evidence of Father's historical and ongoing use of dangerous drugs

despite Father's efforts to treat his substance abuse problem proved that the children would not obtain permanency in Father's care.

Father appeals the termination of his parental rights over J.T. and M.T. J.T.'s and M.T.'s cases have been consolidated for appeal.

ANALYSIS

Did the district court err by terminating Father's parental rights over J.T. and M.T.?

On appeal, Father argues that we should reverse the termination of his parental rights over J.T. and M.T. because clear and convincing evidence did not establish that he was unfit and unlikely to become fit to care for J.T. and M.T. in the foreseeable future as stated under K.S.A. 38-2269(a). He argues that clear and convincing evidence does not support those parental unfitness rulings because in making those determinations the district court ignored his positive efforts to reintegrate with J.T. and M.T. as well as ignored SFM's shortcomings during the attempted reintegration process. Alternatively, Father argues that we should reverse the termination of his parental rights over J.T. and M.T. because the State presented no "specific evidence" proving that termination was in the children's physical, mental, and emotional best interests as meant under K.S.A. 38-2269(g)(1).

The State responds that we should reject both of Father's arguments because Father's historical and ongoing substance abuse and domestic violence problems prove that Father was unfit and unlikely to become fit to parent J.T. and M.T. in the foreseeable future. It argues that Father's failure to attain stable housing, to attain stable employment, and to complete some court-ordered courses constitutes further proof that Father was unlikely to become fit to care for the children in the foreseeable future. And it argues that Father's complaints about SFM's efforts to rehabilitate the family during J.T.'s and M.T.'s

CINC cases hinge on the obvious weakness of the evidence in his favor. As for the district court's best interests of J.T. and M.T. determinations, the State argues that we should affirm those findings based on Father's behavior throughout J.T.'s and M.T.'s CINC cases. As with its parental unfitness arguments, the State points to evidence of Father's ongoing substance abuse and domestic violence problems as proof that termination of Father's parental rights was in J.T.'s and M.T.'s physical, mental, and emotional best interests. It points to evidence of Father's evasive behavior while Mother and M.T. were missing as proof that Father actively acted against his children's best interests during their CINC cases.

a. *Applicable Law*

K.S.A. 38-2269 controls the district court's decision whether to terminate a person's parental rights. Subsection (a) states that after the district court adjudicates a child in need of care, it "may" terminate the parent's rights after finding "by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future." K.S.A. 38-2269(a). Meanwhile, K.S.A. 38-2269(g)(1) provides that once the district court makes this parental unfitness finding, it must consider whether termination of the parent's rights is in the best interests of the child. It explains that when considering the child's best interests, "the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order." K.S.A. 38-2269(g)(1).

When evaluating a parent's fitness under K.S.A. 38-2269(a), the district court must consider K.S.A. 38-2269(b)'s nonexclusive list of factors that may establish parental unfitness. Also, when the child is not presently in the parent's physical custody, the

district court's parental fitness analysis must consider subsection (c)'s nonexclusive list of factors that may establish parental unfitness.

Here, the district court ruled that Father was presently unfit and unlikely to become fit to care for J.T. and M.T. in the foreseeable future under K.S.A. 38-2269(b)(3), (b)(7), (b)(8), (c)(2), and (c)(3). Those subsections provide as follows:

> "(b) In making a determination of unfitness the court shall consider, but is not limited to, the following, if applicable:
>
> . . . .
>
> (3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;
>
> . . . .
>
> (7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
>
> (8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child; . . .
>
> . . . .
>
> "(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, shall consider, but is not limited to, the following:
>
> . . . .
>
> (2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;
>
> (3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home . . . ." K.S.A. 38-2269.

Furthermore, K.S.A. 38-2269(f) clarifies that the existence of any factor under subsection (b) or (c) "standing alone may, but does not necessarily, establish grounds for termination of parental rights." Thus, clear and convincing evidence supporting any factor under subsection (b) or (c) may sustain a district court's parental unfitness ruling.

Clear and convincing evidence exists when after reviewing all the evidence in the light most favorable to the prevailing party, the district court's fact-findings are highly probable. *In re Adoption of Baby Girl G.*, 311 Kan. 798, 806, 466 P.3d 1207 (2020). When the district court considers whether clear and convincing evidence proves a parent's unfitness, it may look to the parent's past behavior as an indicator of the parent's future behavior. *In re K.L.B.*, 56 Kan. App. 2d 429, 447, 431 P.3d 883 (2018). Meanwhile, when we review the district court's fact-findings for clear and convincing evidence, we cannot reweigh the evidence. Thus, when considering the district court's parental unfitness determination, we must accept the district court's fact-findings on conflicting evidence and witnesses' credibility. *In re Adoption of Baby Girl G.*, 311 Kan. at 806.

As for a district court's best interests of a child determinations, K.S.A. 38-2269(g)(1) states that if the district court finds a parent unfit under subsection (a) it must consider whether termination of the parent's rights is in the child's best interests. It provides that when determining whether termination is in the child's best interests, "the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order." K.S.A. 38-2269(g)(1). The Kansas Code for Care of Children "recognizes that children experience the passage of time in a way that makes a month or a year seem considerably longer than it would for an adult, and that different perception typically points toward a prompt, permanent disposition." *In re M.S.*, 56 Kan. App. 2d 1247, 1263, 447 P.3d 994 (2019). So, when considering a child's best interests, the district court must consider the child's best interests while using "'child time.'" 56 Kan. App. 2d at 1263.

Of further note, the State's burden to prove that termination of a parent's rights is in the child's best interests under subsection (g)(1) is lower than the State's burden to prove a parent's unfitness under subsection (a)(1). See K.S.A. 38-2269. Only a preponderance of the evidence must support the district court's best interests of the child

findings. 56 Kan. App. 2d at 1264. So, on appeal, we review the district court's best interests of a child determination for an abuse of discretion. A district court abuses its discretion when it makes an error of fact, an error of law, or an otherwise unreasonable decision. 56 Kan. App. 2d at 1255.

b. *Parental Unfitness Findings*

Because K.S.A. 38-2269(b)(3) specifically involves whether a parent cannot care for a child based on his or her dangerous drug use, the district court's parental unfitness ruling under subsection (b)(3) just addressed Father's drug use. Likewise, because K.S.A. 38-2269(c)(2) specifically involves whether a parent made adequate efforts to visit and communicate with the child, the district court's parental unfitness determination under subsection (c)(2) just addressed Father's visitation and communication efforts. Yet, when the district court ruled Father unfit (1) because SFM's reasonable rehabilitation efforts had failed as set out under K.S.A. 38-2269(b)(7), (2) because Father had not adjusted his circumstances to J.T.'s and M.T.'s needs as set out under K.S.A. 38-2269(b)(8), and (3) because Father had not carried out his reasonable court-approved reintegration case plan for J.T. and M.T. as set out under K.S.A. 38-2269(c)(3), the court cited evidence that Father had substance abuse problems, domestic violence problems, unstable housing, unstable employment, and insufficient visitation and communication efforts. As a result, the district court often cited the same evidence on Father's alleged substance abuse, domestic violence, unstable housing, unstable employment, and inadequate visitation and communication efforts to support its parental unfitness rulings under K.S.A. 38-2269(b)(3), (b)(7), (b)(8), (c)(2), and (c)(3).

Father believes that the district court's parental unfitness determinations ignored the following evidence indicating that he may become fit to parent J.T. and M.T. in the foreseeable future: (1) that he had tried and was trying to not use dangerous drugs, (2) that he had completed a domestic violence course, (3) that he had appropriate and stable

housing during the TPR hearings, (4) that he had enough money to always make "financial ends meet," and (5) that he had made parenting progress during his visitations with J.T. and M.T. Father also argues that the district court ignored evidence of SFM's inadequate efforts to rehabilitate him with the children throughout their CINC cases. In particular, he complains that Hubbard's failure to contact him once becoming the acting permanency specialist in late November 2021 proves that SFM made unreasonable efforts to reintegrate him with J.T. and M.T. He blames Hubbard for any failings concerning his communication efforts with SFM, J.T., and M.T. during the children's CINC cases. He further asserts that Rossow had a duty to correct any behavior that she deemed inappropriate during his visitations with the children.

Nevertheless, there are several problems with Father's parental unfitness arguments. To begin with, Father's arguments ignore that the district court made a very strong credibility determination against him. Again, we cannot reweigh the district court's fact-findings on conflicting evidence and witnesses' credibility. *In re Adoption of Baby Girl G.*, 311 Kan. at 806. Yet, Father's arguments about being fit in the foreseeable future because he intended to get substance abuse help soon, because he made his financial ends meet, because he made parenting progress during visitations, and because SFM made unreasonable reintegration efforts hinge on his testimony. For instance, although Father testified that he has had the same continuously working phone number for five years and he testified that he never received phone calls from Hubbard, Hubbard testified that she tried calling Father twice for random drug tests once she was acting permanency specialist. Under the rule against reweighing evidence, because the district court made a credibility determination against Father, we must accept Hubbard's testimony as true. So, in short, each of Father's arguments hinging on his own testimony that conflicts with another witness' testimony necessarily fails.

Next, Father seemingly argues that Hubbard's failure to contact him while acting permanency specialist means that the State cannot prove that he used dangerous drugs in

a way that made him unable to care for J.T. and M.T. based on the factors set out under K.S.A. 38-2269(b)(3). He also explicitly argues that Hubbard's failure to contact him meant that any "lack of communication was the fault of [SFM] rather than [him]." But Father's specific complaints about SFM's communication efforts never address the district court's finding that although SFM's communication efforts with Father and Mother could have been better, SFM's shortcomings did not directly or indirectly cause Father's parental unfitness. In other words, Father's analysis ignores that the district court's parental unfitness findings considered the adequacy of SFM's communications efforts. He further ignores that it found that he was unfit and unlikely to become fit to care for J.T. and M.T. even if SFM staff could have and should have done a better job keeping in contact with him.

Father's argument also ignores that there is evidence that Father knew that he needed to consistently contact SFM. The district court imposed Father's reintegration case plan on July 26, 2019, when it adjudicated J.T. a child in need of care. From that point, Father's case plan required him to submit to drug testing within 24 hours of SFM's request. Also, an SFM court report for J.T.'s February 27, 2020 review hearing discussed an incident on February 14, 2020, during which SFM staff reminded Father that he must contact SFM at least 24 hours before any requested visitation time with the children. Clearly, to comply with the preceding tasks, Father needed to give SFM up-to-date contact information so it could easily reach him to request random drug testing. And according to the information in SFM's court report, SFM's visitation policy places the burden on Father to contact SFM for visitation time. Thus, even assuming that SFM's communication efforts should have been better, Father's argument ignores the evidence that Father knew he had a duty to give SFM current contact information and a duty to regularly contact SFM. In turn, Father's arguments about missing SFM's randomly requested drug tests and visitations with J.T. and M.T. based on SFM's failure to communicate with him are unpersuasive.

Notwithstanding the preceding, all of Father's parental unfitness determinations complaints are baseless. On appeal, Father attacks the district court's ruling that he consistently violated his substance abuse-related reintegration case plan tasks by pointing to his previous completion of outpatient treatment, to his prior completion of two substance abuse evaluations, and to his testimony that he wanted to engage in further outpatient drug treatment. He contends that this evidence supported that he might become fit to parent J.T. and M.T. in the foreseeable future.

Father's appellate argument, however, is a snare and a delusion because he never made this specific argument before the district court. For example, at the first and second TPR hearings, Father denied ever using methamphetamine or having a substance abuse problem. Even when confronted with his five methamphetamine-positive hair follicle tests at the second TPR hearing, Father denied ever using methamphetamine. At one point, he suggested that he failed the hair follicle tests because he was around people who smoked methamphetamine. And at the third TPR hearing, Father indicated that he would complete additional outpatient drug treatment because his substance abuse evaluations recommended it. Yet, during this same line of questioning, Father explained that he never told his evaluator about failing the five hair follicle drug tests. He testified that he did not really need any drug treatment because he did not do drugs. Then, in his closing arguments, Father never addressed whether he had a substance abuse problem. Rather, when he referenced his alleged drug use, he discussed Hubbard's communication efforts. He argued that the district court could not find him "presently" unfit for his alleged drug use because SFM's inadequate communication efforts meant that there was no recent drug testing evidence.

Thus, Father's argument before the district court was that he never violated J.T.'s and M.T.'s substance abuse-related reintegration case plan tasks. Below, before the district court, he did not argue that his progress on his substance abuse-related reintegration case plan tasks established that he may become fit to care for J.T. and M.T.

in the foreseeable future. Hence, Father's argument about the district court wrongly ignoring evidence that he had made and was making progress addressing his substance abuse problem fails because Father never made this argument before the district court. See *In re Marriage of Williams*, 307 Kan. 960, 977, 417 P.3d 1033 (2018) (holding that an issue not raised before the district court cannot be raised for the first time on appeal).

Yet, even if we were to assume that Father's new argument about his progress addressing his substance abuse problem was properly before us, we determine that clear and convincing evidence supported the district court's determination that Father had a substance abuse problem rendering him unfit to care for J.T. and M.T. in the foreseeable future. For example, Father's refusal to admit that he ever used methamphetamine despite his methamphetamine-positive hair follicle test shows that Father was either deluded about his drug use or lying to the court about his drug use. This showed that Father was not going to address his methamphetamine addiction because he did not believe that he had a methamphetamine addiction. And whether Father was in denial or lying to the district court, the State's evidence established that after the first TPR hearing on August 10, 2021, Father's hair follicles were positive for methamphetamine twice—on August 16, 2021, and on September 21, 2021. The State also established that Father was arrested for DUI on November 1, 2021. So, this evidence proved that Father consistently denied that he had a substance abuse problem and that he violated his substance abuse-related reintegration case plan tasks even as his TPR hearings progressed.

Perhaps most troubling, Father took no responsibility and had no explanation why J.T. was born with methamphetamine in his body and why M.T.'s hair follicles tested positive for methamphetamine when he was eight months old. In its order, the district court discussed Father's testimony about whether he knew Mother's and M.T.'s location following M.T.'s birth on August 24, 2020. It found that Father's testimony when asked about this issue was vague and inconsistent. Citing Father's vague and inconsistent testimony, the district court then found that Father "clearly did not want to admit what he

did know about either the whereabouts of [M.T.] or the caretakers of his son . . . ." So, the district court determined that Father had information about M.T.'s whereabouts when M.T. was missing. In turn, the district court implicitly found that Father played a role in where M.T. was staying, and therefore played a role in M.T.'s caretaking between M.T.'s birth and when Father delivered M.T. to the SFM office on May 3, 2021.

One would assume that an eight-month-old would not have methamphetamine in his body unless somebody exposed him to methamphetamine. Because it found that Father knew where M.T. was located and played a role in M.T.'s caretaking while DCF and SFM were searching for M.T., it follows that Father was responsible for M.T.'s safety while DCF and SFM were searching for M.T. So, Father's complete refusal to admit that he had a substance abuse problem, even when confronted with his eight-month-old son's drug test results, constituted strong evidence that he was unfit and unlikely to become fit to care for J.T. and M.T. in the foreseeable future.

Indeed, in this case, the evidence supporting the district court's finding that Father's dangerous drug use made him unfit and unlikely to become fit to care for the children in the foreseeable future under K.S.A. 38-2269(b)(3) is so clear and convincing that the district court could have found Father unfit based on his substance abuse problems alone. See K.S.A. 38-2269(f) (stating that any single factor under subsection [b] or [c] may prove parental unfitness). Simply put, when drug testing proves (1) that a parent has a serious ongoing addiction to methamphetamine, (2) that this parent has two infants who ingested methamphetamine, and (3) that this parent refuses to admit that he or she has a serious ongoing addiction to methamphetamine, clear and convincing evidence exists that this parent's dangerous drug use renders him or her unable to care for their children's ongoing physical, mental, or emotional needs.

Next, Father discusses the domestic violence in his and Mother's relationship just once in his appellant's brief. He seemingly argues that the district court should not have

cited evidence that he physically abused Mother when finding him unfit under K.S.A. 38-2269(a) because he completed his reintegration case plan task to take a domestic violence course. But Father's argument ignores that he did not complete this domestic violence course until after the first TPR hearing; his certificate of completion was dated September 18, 2021. Therefore, it took Father more than two years after he was ordered to complete the domestic violence course in J.T.'s CINC case to do so.

Besides, Father's parental unfitness analysis ignores the overwhelming evidence that Father continued to physically abuse Mother while denying that he had a domestic violence problem. When Father testified about his relationship with Mother, he denied ever physically abusing her. Initially, he testified that he had no knowledge about Mother's police calls for help on August 11 and 12, 2020. Later, he seemingly excused his behavior, emphasizing that he had only been arrested for crimes, not charged with crimes, based on Mother's calls to the police.

During her TPR hearing testimony, Mother often provided non-responsive and evasive answers to the State's questioning about domestic violence within her and Father's relationship. But when asked directly, Mother confirmed that she called the police on Father on August 11 and 12, 2020. She agreed that during those calls, she reported that Father attempted to strangle her and run over her with a car. Clemons testified that Mother told him that Father was physically abusing her in September 2021. Rossow testified that when she tried to supervise a scheduled visit with the family at the Beverly apartment on October 13, 2021, Mother told her that Father had injured her, causing the large bald spot at her hairline. And although Mother would not say why she moved out of Father's Beverly apartment, Mother agreed that she contacted police for housing help on November 17, 2021, because she felt uncomfortable living with Father. She agreed that she chose to live out of her car rather than live with Father in the Beverly apartment.

As a result, the evidence before the district court indicated that Father had physically abused Mother on multiple occasions, including after the first TPR hearing on August 10, 2021, and after he completed his domestic violence course on September 18, 2021. Given this, it is readily apparent that Father's behavior posed a serious ongoing safety risk for the children. What is more, although Father has highlighted his completion of the domestic violence course, his completion of this course is inconsequential for two reasons: (1) given that the evidence proved that he continued to physically abuse Mother, and (2) given that his physical abuse of Mother was inconsistent with the purpose of the course, which was also one of his reintegration case plan tasks. So, contrary to Father's apparent argument otherwise, the district court correctly found that Father failed to adequately address his domestic violence problems as J.T.'s and M.T.'s CINC cases pended. In turn, the district court did not err when it relied on evidence of Father's historical and ongoing domestic violence problems with Mother when determining Father unfit and unlikely to become fit to care for J.T. or M.T. in the foreseeable future.

As for Father's housing, he argues that clear and convincing evidence did not support the district court's finding that he lacked stable and appropriate housing for J.T. and M.T. because the only evidence before it was that he currently had stable and appropriate housing at the Beverly apartment. To support this assertion, he points to his testimony that he moved into the Beverly apartment immediately after the first TPR hearing on August 10, 2021, and that he continued to live at the Beverly apartment as of the fourth TPR hearing on January 14, 2022. He also points to testimony from Clemons and SFM's reintegration director that his Beverly apartment was appropriate when they last inspected it, which was before Hubbard became acting permanency specialist. Nevertheless, Father's argument is problematic for a couple of reasons.

First, Father's argument hinges on his complaints about SFM not making adequate efforts to remain in contact with him once Hubbard became acting permanency specialist. As already explained, Father's complaints about SFM's communication efforts ignore (1)

that the district court found that any communication failures by SFM had no bearing on why Father was unfit and (2) that the evidence proves that Father knew he had an independent duty to remain in contact with SFM. So, he cannot blame Hubbard's allegedly inadequate communication efforts to undermine the district court's ruling that he lacked stable and appropriate housing.

Second, even if Father's housing was appropriate, which it was during Rossow's final walk-through on November 3, 2021, Father never proved that his housing was stable. Father testified that before he had a month-to-month lease at the Beverly apartment, he lived at a motel with a week-to-week lease for a year. He testified that before he lived in that motel, he lived with a cousin for about eight months. Yet, at J.T.'s birth, Father was living in a motel with Mother and J.T.'s older siblings. So, the evidence supported that since the State moved to terminate Father's parental rights over J.T. on June 3, 2019, Father had lived in four different locations, never signing a lease to live in one location for over a month. Undoubtedly, Father's financial insecurity resulted in him entering temporary living arrangements. Still, given that the State's evidence proved (1) that Father continued to buy methamphetamine and (2) that he made inadequate efforts to obtain stable employment, Father's temporary living conditions are evidence of his housing instability.

Also, Father's argument ignores that his and Mother's unstable relationship affected his housing stability. Father testified at the first TPR hearing that he would not let Mother live at the Beverly apartment. Father testified at the second TPR hearing that he and Mother were romantically involved again and living together at the Beverly apartment. But at the third TPR hearing, Mother explained that she was no longer living with Father because something happened after the second TPR hearing that made her uncomfortable around Father. When parents have an unstable relationship, it can affect their children in many ways. When parents' living arrangements frequently change because they are in an unstable relationship, that can naturally affect the stability of that

family's home. In this case, the evidence of Mother moving in and out of the Beverly apartment following disputes with Father supports that Father's living arrangements at the Beverly apartment were unstable.

Next, although Father currently argues he always had enough money to make his financial ends meet while not having a full-time job, Father's TPR hearing testimony contradicts his argument. During his testimony, Father explained that he owed $5,000 in traffic fines and $950 in probation fees. He explained that he continued to drive on his revoked license because he could not afford to pay his traffic fines. Put simply, the preceding testimony proves that Father was in debt and not meeting his financial obligations when he did not have a full-time job.

Also, Father's argument ignores that his reintegration case plan task required him to maintain full-time employment or provide proof that he was searching for full-time employment. When Father cross-examined Clemons, Clemons agreed with *Father's concession* that he never had regular employment. Also, based on his own testimony, it seems that he had just two traditional jobs during J.T.'s and M.T.'s CINC cases—his job at Pratt and his job at Aerotek. It is quite likely that the COVID-19 pandemic played a role in Father's ability to obtain employment in 2020 and 2021. Nevertheless, holding down just two jobs over J.T.'s CINC case, which had been pending over two years and seven months by the fourth TPR hearing, was strong evidence of employment instability. This is especially true given Father's admission that he lost one of his traditional jobs because he missed too many days of work.

Father also testified that when he was unemployed in 2020, he made money at side jobs, which he did not elaborate on or report to SFM. He explained that he never reported those side jobs to SFM staff because he was getting paid under the table. Father's contention that he was making money under the table at side jobs ignores that his reintegration case plan task required him to maintain full-time employment that Father

could *prove* to SFM. And it is problematic because the State petitioned the district court to find J.T. a child in need of care partly based on Mother's allegation that Father was a drug dealer. Father's contention that he could meet his financial obligations with these side jobs at which he was getting paid under the table is troubling because it raises questions about whether Father was legally earning money.

Father's final argument about the district court's parental unfitness ruling concerns his parenting skills during visitations. He points to evidence that he started attending his visitations with J.T. and M.T. on time, that he brought supplies for J.T. and M.T. at visitation, and that he sometimes properly cared for J.T., as proof that he was adjusting his circumstances to meet J.T.'s and M.T.'s needs. He also suggests that he cannot be blamed for any improper parenting behavior he may have engaged in at the visitations because Rossow never corrected that behavior. Yet, as with his previous arguments attacking the district court's parental unfitness determinations, Father's argument ignores the evidence supporting the district court's finding that he made inadequate visitation efforts with J.T. and M.T.

For starters, the fact that Father started arriving to his visitations on time is unimpressive since Father's supervised visits with Mother were moved from the SFM office to the Beverly apartment on September 15, 2021. He should have been on time to those visitations since they were being held in his own residence. Although Father contends that any improper parenting that he engaged in during visitations was not his fault because Rossow never corrected that improper behavior, Father's argument ignores that he explicitly testified that he did not interact with his children during visitation time because he did not want to while someone else monitored his visits. So, Rossow's failure to correct Father's improper parenting behavior—like leaving his children in a different room during his visitation time—was not the reason why Father failed to actively engage with his children during visitations.

In addition, the term "visit" is a common word. Visiting with someone requires people to spend time together socially. Rossow reported that one of Father's main problems during visitation was that he did not spend time with the children, leaving them in a different room with Mother. Because the term visit requires people to interact socially, even if Rossow had a duty to correct Father's improper behavior, she should not have had to tell Father to interact with his children during visitation. This was the underlying purpose of his visitations with J.T. and M.T.

To review, Father's court-approved reintegration case plan tasks required him to do the following: (1) to sign all required releases and forms, (2) to complete a clinical interview and assessment, (3) to complete a parenting course, (4) to complete a budget and nutrition course, (5) to complete a substance abuse evaluation, (6) to refrain from using any illegal drugs or alcohol, (7) to submit to hair-follicle drug testing every 90 days and within 24 hours of such request, (8) to submit to random urinalysis drug testing twice monthly and within 24 hours of such request, (9) to complete a domestic violence course, (10) to maintain appropriate and stable housing, and (11) to maintain full-time employment or actively search for a job. Under his case plan, Father also had to follow the recommendations of any "assessments, evaluations, tests, and treatment programs." When the district court found Father unfit under K.S.A. 38-2269(a), it relied on the evidence supporting the following: (1) that Father had an ongoing substance abuse problem, (2) that he had an ongoing domestic violence problem, (3) that he had unstable housing, (4) that he had unstable employment, (5) that he had made inadequate communication efforts with SFM, and (6) that he had made inadequate visitation efforts with the children. It cited this evidence as proof that Father was unfit and unlikely to become fit to care for J.T. and M.T. in the foreseeable future based on the factors set out under K.S.A. 38-2269(b)(3), (b)(7), (b)(8), (c)(2), and (c)(3).

Nevertheless, as of the fourth TPR hearing on January 14, 2022, Father had not completed his clinical interview or assessment and he had not completed his budgeting

and nutrition course. He was not following the recommendations of the parenting and substance abuse evaluations he had taken. He had five methamphetamine-positive hair follicle drug tests, including twice after the first TPR hearing. He had committed a DUI offense within the past three months. He had not remained in contact with SFM for about two months, which meant that over the past two months the following occurred: SFM could not request random drug testing from Father; it was not checking Father's Beverly apartment for appropriateness; and it was not allowing Father to have visitations with J.T. and M.T. Further, Father's own testimony proved that he actively chose not to engage with J.T. and M.T. during visitations because he was upset that those visits were being supervised. Likewise, his testimony proved that he made minimal efforts to obtain and then maintain full-time employment during the children's CINC cases.

In summary, Father challenges each of the district court's parental fitness determinations, but his arguments hinge on ignoring the district court's strong credibility determination against him, highlighting the facts supporting his positions, and ignoring the State's adverse evidence. A review of the applicable law as applied to the evidence in this case, however, proves that Father could not safely care for J.T. and M.T. given his ongoing methamphetamine abuse, his ongoing physical abuse of Mother, and his refusal to admit that such abuse was happening. Additionally, this evidence proves that even if SFM's communication efforts were inadequate, SFM's failings did not cause Father's ongoing substance abuse issues, domestic violence issues, unstable housing, unstable employment, and inadequate visitation efforts with J.T. and M.T. So, contrary to Father's argument otherwise, clear and convincing evidence supported the district court's finding that he was unfit and unlikely to become fit to care for J.T. and M.T. in the foreseeable future under K.S.A. 38-2269(b)(3), (b)(7), (b)(8), (c)(2), and (c)(3). Thus, we affirm the district court's parental unfitness ruling against Father.

c. *Best Interests of the Children Findings*

In his alternative argument, Father contends that even if clear and convincing evidence supported the district court's parental unfitness ruling under K.S.A. 38-2269(a), a preponderance of the evidence did not support the district court's determination that termination of his parental rights over J.T. and M.T. was in their best interests. In making this argument, Father asserts that K.S.A. 38-2269(g)(1)'s language suggests "that termination is only appropriate in situations where there is no better alternative to termination to ensure that the needs of the child are being met." He contends that the evidence in his case does not meet this standard because it is "mixed at best." He asserts that there was no "specific evidence" why termination of his parental rights over J.T. and M.T. was in their best interests. According to Father, Clemons testified that there was no unique benefit that made termination of his rights in J.T.'s and M.T.'s best interests. He also notes that SFM's reintegration director testified that it would "be a loss for" J.T. and M.T. to have Father's parental rights terminated.

Once more, when the district court ruled that it was in J.T.'s and M.T.'s physical, mental, and emotional best interests to terminate Father's parental rights, it stressed that Father had made little progress modifying his behavior to meet J.T.'s and M.T.'s needs during their entire CINC cases. It specifically cited to Father's "long-term addiction" and improper behavior during visitations as proof that Father would not become fit to parent the children in the foreseeable future. And it stressed that J.T. and M.T. deserved permanency, as evidenced by the fact both J.T. and M.T. had been in DCF custody for their entire lives.

Plainly, as argued by Father, K.S.A. 38-2269(g)(1) directs the district court to terminate a parent's rights over his or her child only when the evidence proves that there is no alternative to termination of the parent's rights that would serve the child's best interests.

As for Father's argument that there was no specific evidence proving that termination of his parental rights over J.T. and M.T. was in their best interests, Father's argument hinges on his cherry picking of Clemons' and the reintegration director's testimony. Although Clemons testified that there was no unique benefit for J.T. and M.T. by terminating Father's parental rights, he also testified that termination of Father's parental rights was in the children's physical, mental, and emotional best interests. And the reintegration director did not simply testify that the children would suffer a loss by terminating Father's parental rights. The reintegration director noted that the children would suffer a loss by terminating Father's parental rights while also explaining why she still believed that it was in the children's best interests to terminate his parental rights. The director testified that it was in the children's best interests because they deserved permanency, which included a home life free of domestic violence. She explained that during the duration of the children's CINC cases, Father had shown minimal progress addressing his reintegration case plan tasks. She stressed that as infants, J.T. and M.T. were in a pivotal part of their life for memory formation.

Meanwhile, Hubbard testified that it was in J.T.'s and M.T.'s best interests to terminate Father's parental rights because Father never took responsibility for any of his improper conduct, because the children deserved permanency, and because the children's needs were being met at their foster placement. In other words, Hubbard testified that it was in the best interests of J.T. and M.T. to terminate Father's parental rights because Father made no progress addressing his problems that resulted in J.T. and M.T. entering DCF custody—his methamphetamine use and his physical abuse of Mother—since the children entered DCF custody.

Accordingly, Father's complaints that a preponderance of the evidence did not support the district court's best interests of the children findings are unpersuasive. The SFM staff's testimony established by a preponderance of the evidence that termination of Father's parental rights over J.T. and M.T. was in the children's best physical, mental, and

emotional interests as meant under K.S.A. 38-2269(g)(1). Father's minimal progress making the necessary changes in his life to safely care for J.T. and M.T., especially his failures to address his methamphetamine use and domestic violence problem, proved that Father was not going to make those necessary changes in the foreseeable future. Father's unwillingness to even admit that he ever used methamphetamine (1) despite drug-testing positive for methamphetamine multiple times during J.T.'s and M.T.'s CINC cases and (2) despite both J.T. and M.T. drug-testing positive for methamphetamine as babies, was very troubling and strong evidence that Father would never adjust circumstances to meet J.T.'s and M.T.'s behavioral needs. As a result, the district court did not abuse its discretion when it found that termination was in J.T.'s and M.T.'s best interests. For this reason, we affirm the district court's termination of Father's parental rights over J.T. and M.T.

Affirmed.